

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9765 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHIRU @ BALDANIYA

Versus

STATE OF GUJARAT

Appearance:

MR DIVYESH C SEJPAL for Petitioner
Mr.MR ANAND, G.P. with Ms.Ami Yagnik, A.G.P., for
Respondent No.1 - State
SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/01/97

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 6th September 1996 passed by Respondent No.2 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds of detention have been placed on record at Annexure : B. It can be seen therefrom that the detaining Authority has placed reliance on three cases respectively registered at Kapadra Police Station, Varachha Road Police Station and Varachha Police Station, Surat, under Sections 394, 114, 395, 397, 452, 34 and 397, 342, 452, 34 I.P.C., last two read with Section 135 of the Bombay Police Act. Their respective CR numbers are 4/96, 63/96 and 64/96. Over and above these cases the Detaining Authority has relied upon the statements of three witnesses speaking about the incidents dated 26.5.1996, 17.6.1996 and 1.7.1996, inter alia, alleging that the concerned witnesses were beaten on such occasion and atmosphere of fear was generated among the people collected at the time of such incidents. Considering this material the detaining Authority has recorded a finding that the detenu is a "dangerous person" within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the public order, he found it necessary to pass impugned order of detention against the detenu. The same is subjected to challenge in this petition.

3. I have heard Mr.H.R.Prajapati, learned Advocate appearing with Mr.Sejpal, learned advocate for the petitioner and the learned A.G.P. for the respondent at length. Mr.Prajapati submitted a number of contentions in support of the case of the detenu. However, it would not be necessary to refer to and deal with the same when this petition is required to be allowed on the ground of non-supply of the copies of the bail applications and the bail orders so far as registered offences are concerned. This ground in the petition appears in Paras : 31 & 32, which would read as under :

31. The petitioner submits that the bail application being Misc. Cri. Application No.57/96 filed by the co-accused Shri Bhimjibhai Muljibhai Koli before the Addl. Sessions Judge, Surat in connection with the offence registered at C.R. No.4/96 and the bail order dt. 12.1.96 releasing the co-accused passed below therein were not placed before the detaining authority nor the copies thereof supplied to the petitioner. Therefore, the subjective satisfaction of the detaining authority gets vitiated owing to non-consideration of vital and

important documents i.e. bail application, and the bail order of co-accused Shri Bhimjibhai Muljibhai Koli and non-supply thereof has affected the right of the petitioner to make an effective representation.

32. The petitioner submits that the bail application being Misc.Cri.App. No.764/96 filed by the co-accused Shri Kanubhai Laljubhai Randaliya before the Addl. Sessions Judge, Surat in connection with the offence registered at C.R.No. 64/96 and the bail order dt.27.6.96 releasing the co-accused and the bail application being Misc.Cri.App.Nos.408/96 and 455/96 filed by the co-accused Shri Arvind Manji and Mahendrasinh @ Munno Jivabhai before the Addl. Sessions Judge, Surat in connection with the offence registered at C.R.No. 64/96 and the bail order dt.15.4.96 respectively releasing the co-accused passed below therein were not placed before the detaining authority nor the copies thereof supplied to the petitioner. Therefore, the subjective satisfaction of the detaining authority gets vitiated owing to non-consideration of vital and important documents i.e. bail application, and the bail order of co-accused Shri Bhimjibhai Muljubhai Koli and non-supply thereof has affected the right of the petitioner to make an effective representation.

4. No Affidavit in Reply has been filed. Having gone through the grounds of detention and other documents supplied to the detenu it has been fairly conceded that the aforesaid documents have not been supplied as alleged by the petitioner. In this connection reliance has been placed on a decision of this Court rendered on 1st August 1996 (Coram : K.R.Vyas,J.) in Special Civil Application No.3661 of 1996, where the following observations were made :

".....The bail applications as well as the bail orders passed in favour of the co-accused are relevant documents and, therefore, copies thereof ought to have been supplied to the detenu. The non-supply of the copies thereof has adversely affected the right of the detenu of making an

effective representation against his detention guaranteed under Article 22(5) of the Constitution of India. The Supreme Court in State of U.P. V/s. Kamal Kishore Saini, 1988 (1) SCC 287 has held that bail application filed by the co-accused and the order passed therein constitute relevant material, which was required to be produced before the detaining authority and the detaining authority was required to apply its mind to such relevant material. When such a relevant material is withheld from the detaining authority, the Apex Court held that the satisfaction of the detaining authority is vitiated inasmuch as the relevant material is kept back from the detaining authority and, therefore, its subjective satisfaction is vitiated."

5. It has, however, been submitted by the learned A.G.P. that even if the material had been placed before the detaining authority, he would not have changed subjective satisfaction inasmuch as the bail application of the petitioner and the order passed thereon by the concerned Court were sufficient for having subjective satisfaction for passing the impugned order of detention. Similar submission was made before the Apex Court in Kamal Kishore's Case (supra). This is how the contention appears.

"Against this order the instant appeal has been filed on special leave. The learned Counsel appearing on behalf of the State-appellant, did not question before us the validity and legality of the finding of the High Court in so far as it relates to the non-supply of the relevant and vital materials, that is, the statements recorded under Section 161 of the Code of Criminal Procedure so far as ground No.1 of the order of detention is concerned, to the detenus and also of the non-placement of the application made by the co-accused before the Judicial Magistrate to the effect that the detenus were falsely implicated in the said case as Vijay pratap Singh was fired at by some unknown assailants and this fact was also mentioned in the bail application made by the detenus before the Court and the police report submitted thereon. The only challenge made on behalf of the appellant is to the finding of the High Court to the effect that the incidents referred to in ground Nos.1 and 2 created only law and order problem and it did not

affect public order. In other words, the even tempo of the life of the community has not at all been affected by the said incident. It is relevant to mention in this connection that the names of the detenus were not mentioned in the FIR in respect of incident in ground No.1 and the basis of their complicity came to be known only in the material found in the course of the investigation. The detenus were supplied only with the copy of the FIR and also extract of the charge-sheet and not the statements under Section 161 of the Code of Criminal procedure. It is undisputed that the charge-sheet was subsequently submitted in the Court and the respondents were furnished with the copies of the statements recorded under Section 161 of the Cr.P C long after the passing of the order of detention communicating the grounds of detention. Similarly, with regard to ground No.3, the application of the co-accused as well as the statement made in the bail application filed on behalf of the detenus alleging that they had been falsely implicated in the same case and the police report thereon, were not produced before the detaining authority before passing of the detention order. The High Court, therefore, was justified in holding that the assertion made in the return that even if the material had been placed before the detaining authority, he would not have changed the subjective satisfaction as this has never been accepted as a correct proposition of law. It is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatory required under the Act. This finding of the High Court is quite in accordance with the decisions of this Court in the case of Asha Devi V. K.Shivraj and Gurdip Singh V. Union of India."

The Apex Court dealt with the matter in this respect in Para 15 of the citation and observed :

"Moreover, we have already upheld the finding of the High Court that the order of detention is illegal and bad for non-supply of vital documents to the detenus to enable them to make an effective representation against the grounds of detention and as such their right to make an effective representation as contemplated under

Article 22(5) of the Constitution of India has been infringed rendering the impugned order as illegal and bad."

6. In my opinion, therefore, the arguments canvassed on behalf of the respondents by the learned A.G.P. is squarely met with by the decision of the Apex Court in Kamal Kishore's case (supra).

7. In the result the continued detention of the petitioner is required to be held illegal. Order accordingly. The impugned order of detention, therefore, is quashed and set aside. The petitioner-detenu Dhiru alias Bhana Mathurbhai is directed to set at liberty forthwith if his detention is not required for any other purpose or case. Rule made absolute accordingly.

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